Petition

81-1532

No.

Office - Supreme Court, U.S.
FILED
FEB 12 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JOHN BUEHLER OLIVER,

Petitioner,

versus

AMINOIL, USA, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITION FOR CERTIORARI

Hugh G. Oliver
Attorney of Record
for Petitioner
John Buehler Oliver
P. O. Box 511 - 528 - 4th Street, Westwego, Louisiana, 70094
Telephone: (504) 341-5811

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review are:

(1) Whether an offshore oil production platform owner is responsible for the breaking of a welded outdoor lamp bracket when a welder working in a cramped position put his foot on it;

(2) Whether an offshore oil production platform owner can reasonably assume that a welder at work above an outdoor lamp fixed to the leg of the structure by a weld will not safely place his foot on the pipe bracket in emergency circumstances.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW.... i

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES..... iii

OPINIONS OF LOWER COURTS..... 3

JURISDICTIONAL GROUNDS..... 4

STATUTES INVOLVED..... 4

STATEMENT OF THE CASE..... 5

ARGUMENT..... 7

CONCLUSION..... 13

CERTIFICATE OF SERVICE..... 17

APPENDIX..... 1a

TABLE OF AUTHORITIES

Cases:

Adamson v. Westinghouse Elec. Corp., La. Ct. App., 4th Cir., 236 So. 2d 556 (1970)..... 7

Boudoin v. Schwegmann Bros. Giant Supermarket, La. Ct. App., 4th Cir., 371 So. 2d 370 (1979)..... 8

Fontenot v. Sarver, La. Ct. App., 3d Cir. 183 So. 2d 75 (1966)..... 7

McIlwain v. Placid Oil Co., U. S. Ct. App., 5th Cir., 472 F. 2d 248 (1973)9

Moczygemba v. Danos & Curole Marine Contractors, U. S. Ct. App., 5th Cir., 561 F. 2d 1149 (1977)..... 8

Murphy v. Fidelity & Casualty Co., La. Ct. App., 3d Cir., 163 So. 2d 497 (1964)..... 7

Olsen v. Shell Oil Co., S. Ct. of La., 365 So. 2d 1285 (1977)..... 7

Other authorities:

Louisiana Civil Code, article 2322.. 4

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JOHN BUEHLER OLIVER,

Petitioner,

versus

AMINOIL, USA, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITION FOR CERTIORARI

Hugh G. Oliver

Attorney of Record

for Petitioner

John Buehler Oliver
P. O. Box 511 - 528 - 4th Street, Westwego, Louisiana, 70094
Telephone: (504) 341-5811

OPINIONS OF LOWER COURTS AND TRIBUNALS

1. Judgment of United States District Court, Eastern District of Louisiana, Hon. Peter Beer, Judge, without jury, entitled "JOHN BUEHLER OLIVER versus AMINOIL, USA, INC." No. 78-2241, Section "M"(5). (Appendix A).
2. Findings of Fact and Conclusions of Law. (By trial court.) (Appendix B).
3. Judgment of United States Court of Appeals for the Fifth Circuit, entitled "JOHN BUEHLER OLIVER versus AMINOIL, USA, INC." No. 81-3036, affirming lower court. (Appendix C).
4. Order of United States Court of Appeals for the Fifth Circuit, denying rehearing. (Appendix D).

JURISDICTIONAL GROUNDS

The jurisdiction of this Court is invoked pursuant to U.S.C. 28:2101. Petitioner seeks to review the decision of the United States Court of Appeals for the Fifth Circuit which affirmed the decision of the United States District Court for the Eastern District of Louisiana in favor of defendant.

STATUTES INVOLVED

Louisiana Civil Code article 2322 says: "The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice in its original construction."

In this case the vice in original construction was a pipe bracket which was defectively welded to a platform leg.

It collapsed when the welder put his foot on it.

STATEMENT OF THE CASE

Petitioner John Oliver was a pipe welder working for a contractor employed on a new AMINOIL, USA, INC. platform located in the important petroleum producing sector of the Gulf of Mexico off the Louisiana Coast and known as the High Island field.

Various contractors such as painters who had worked on the platform's final small problems were leaving when AMINOIL's man-in-charge Oberfelt called on the pipe welding contractor foreman to provide two welders to work on the steel deck of the basic structure. Oliver was one of the two. He got to a welding position where two I-beams joined one of the huge metal legs which support the entire platform.

He arrived at the location by walking on a handrail for a distance and then climbing on the lower flange of the I-beam. He had begun to weld when he felt a cramp in his leg and he placed his foot on the welded 1-1/2 inch iron pipe bracket supporting an exterior light fixture on the leg. The bracket gave way and Oliver fell 70 feet into the Gulf.

He was pulled unconscious from the water by a worker for another contractor. This man, the only person to see him fall, leaped into a choppy sea and pulled him to the surface. John Oliver suffered serious injuries.

ARGUMENT

Louisiana Civil Code article 2322 relative to "ruin" of a building applies to an offshore oil platform. Olsen v. Shell Oil Co.,S. Ct. La., 365 So. 2d 1285 (1979); U. S. Ct. App., 5th Cir., 561 F. 2d 1285 (1977). It was held that the concept of a building included necessary appurtenances. The Court cited Adamson v. Westinghouse Elect. Corp., 236 So. 2d 556 where a woman was caught in a malfunctioning city hall elevator and recovered.

Also cited was Fontenot v. Sarver 185 So. 2d 75 where the Louisiana Third Circuit Court of Appeal held that where an infant put a finger in an inadequately protected window fan article 2322 applied.

In Murphy v. Fidelity & Casualty Co. 165 So. 2d 497, another cited case, a man was killed by contact with defective electric wiring and article 2322 was cited in the judgment for his heirs.

Had the defective light bracket killed a person when it struck the catwalk where it was found, article 2322 would have applied. This would have followed because AMINOIL's Mr. Oberfelt allowed the welder to work at a place and under conditions where he knew a foot would be applied to the sturdy 1-1/2 inch bracket pipe if a welder working above got a cramp in his leg.

In Moczygemba v. Danos & Curole Marine Contractors, 561 F. 2d149 (1977) the United States Court of Appeals, 5th Circuit, held that a crane welded to a stationary platform was appurtenant, and if it fell, article 2322 would be applicable.

In Boudoin v.Schweggman Bros. Giant Supermarket, 371 S. 2d 370, Louisiana Court of Appeals, 4th Circuit (1979) article 2322 was applied to a metal railing outside a grocery store.

Trial Court found the petitioner contributorily negligent in placing his foot on the light bracket. The Court always referred to it as a light only. In Finding of Fact #7 the trial court said that defendant AMINOIL "has no duty to assure that the light fixture be installed in a manner to assure that it was so strong and securely attached that it could support the weight of a person". McIlwain v. Placid Oil Co., 472 F. 2d 248 (1973) suggests otherwise. Defendant in that case was held to have a duty to assure that a grating which gave way should hold the weight of a man.

In his preliminary examination of the work-site, Oberfelt, the AMINOIL man, could have seen a danger in putting any weight at all on the steel bracket of the light. He could have warned the welding foreman of such danger. He did not. He could also see

the need a welder would have to put his foot on the bracket in certain situations.

An exterior floodlight on a petroleum production platform is not a bedside reading convenience. It is made to withstand sea storms. The welding contractor foreman put his foot on the bracket.

In spite of the claim that scaffolding was easily available Foreman Broussard got up on the I-beam to finish the work begun by petitioner just as welder Oliver had done. (Deposition Tr. p. 16,17, 22-38). And at page 16 of his deposition Broussard, in answer to a question about the need for scaffolding where Oliver worked, said "I didn't give it much thought."

Boss Welder Broussard completed the work that Oliver had begun WITHOUT SCAFFOLDING. (Emphasis supplied). It is plain

that he did not think scaffolding necessary. It must be pointed out that he also walked on the handrail to get to the job. He thought the handrail and the lamp bracket were proper supports for a welder to use to get to a work site on an offshore platform.

What did cause the fall?

A heavy 1-1/2 inch pipe bracket on an exterior light broke when a welder's foot touched it.

No person was present to watch for a fall when Oliver was at work. And neither Oberfelt, the defendant's agent, nor the contractor's foreman insisted on scaffolding. This fact alone demonstrates that neither man considered the job to be extremely dangerous.

In Murphy v. Fidelity and Casualty Co.of New York, cited above, an experien ced electrician was electrocuted when he pushed against an exposed wire. Commenting on the defense of contributory negligence, the Court said it can be successful for defendant only if he can show that plaintiff voluntarily and unnecessarily exposed himself to danger when a person is at work in the presence of a known danger. (see pages 500, 501 and cases cited)

The danger here was a defective light bracket which anyone working nearby would would have placed his foot on since it was made of 1-1/2 inch pipe and was welded to the leg of the platform.

In Findings of Fact (1a, 2a, 3a, 4a, 5a) the trial judge repeatedly says that petitioner put his foot on a "light fixture". Welding Boss Broussard consistently

called the place where Oliver put his foot a "light bracket". (Deposition pages 22-38) It appears the judge had in mind a fixture such as he has on his desk as the object petitioner Oliver put his foot on.

The trial court also stressed the lack of scaffolding on the job. Yet Broussard, the welding boss, used none when he finished the job. (Broussard deposition page 16)

Broussard, the welding foreman, was very guarded in admitting there was any scaffolding available on the platform. (Deposition pages 16 and 17)

The welding contractor had no scaffolding and no safety belts. (Broussard deposition page 17)

It is clear that defendant knew that there was no scaffolding at hand.

Just before the trial was over plaintiff found the reason he had not been able to interview the other welder who was on the job when the accident happened was that the defense had put him up in expensive Hilton Hotel lodgings when he arrived in town in response to plaintiff's subpoena. The Court refused to allow to be put in the record a statement he had made at an earlier time regarding availability of scaffolding on the accident day.

The basic question raised in this case is whether the offshore oil industry will be held to strict liability insofar as the quality of Continental Shelf structures is concerned. If an emergency arises on such a structure a worker will invariably be assigned to control that situat-

ion.. If control means climbing to a place where one puts his foot on an exterior light bracket (not fixture; bracket) then it follows that the bracket must be sturdy enough to withstand extra weight.

If offshore structures are not held to the highest standards of quality then one must think of what happens to the coastal fishing industry if a poorly made oil pipe line breaks. One must think of situations like the blown-out Mexican well that sent waves of oil over the Gulf.

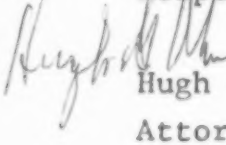
There must be only one standard for construction of offshore petroleum structures: The Best.

CONCLUSION

It is respectfully requested that the Court grant a Writ of Certiorari and review the decision of the United States

Court of Appeals for the Fifth Circuit which affirmed an opinion of the United States District Court for the Eastern District of Louisiana dismissing petitioner's suit.

Respectfully submitted,



Hugh G. Oliver,
Attorney for
John Buehler Oliver

CERTIFICATE

The undersigned counsel of record certifies that service has been made by placing three copies of the foregoing petition in the U. S. Mail, postage prepaid, on all parties required to be served listed below on this 12th day of February, 1982.

Hon. Thomas M. Young
Attorney for AMINOIL, USA, Inc.
424 Gravier Street
New Orleans, Louisiana 70130

Hugh G. Oliver
Attorney of Record
for
John Buehler Oliver
P. O. Box 511
Westwego, 70094 La.
Tel. (504) 341-5811

Appendix

APPENDIX A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

JOHN BUEHLER OLIVER	CIVIL ACTION
VERSUS	NUMBER: 78-2241
AMINOIL, USA, INC.	SECTION: "M" (5)

JUDGMENT

This action came for trial before the Court, Honorable Peter Beer, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that there be judgment herein in favor of defendant AMINOIL, USA, INC. and against plaintiff JOHN BUEHLER OLIVER, dismissing this action on the merits, at plaintiff's costs and prejudice.

New Orleans, Louisiana, this 16th day of January, 1981.

s/ Nelson B. Jones
CLERK OF COURT

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

JOHN BUEHLER OLIVER CIVIL ACTION

versus NUMBER 78-2241

AMINOIL, USA, INC. SECTION M

FINDINGS OF FACT

AND CONCLUSIONS OF LAW

To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are so adopted.

Findings of Fact

1. The plaintiff, John Buehler Oliver, brought suit against Aminoil, USA, Inc. for personal injuries sustained on April 6, 1978. The defendant was the owner of a fixed platform upon which Oliver was working at the time of his accident.

Jurisdiction exists under the Outer Continental Shelf Lands Act, 33 U.S.C.A. S.1301, et seq. and the Longshoremen's and Harbor Worker's Compensation Act, 33 U.S.-A. S.901, et seq.

2. At the time of the accident, Oliver was working as a pipe welder for Petro-Systems, Inc. on an Aminoil platform in the Gulf of Mexico off of Cameron, Louisiana, pursuant to a service contract between his employer, Petro-Systems, and Aminoil.

3. The Aminoil representative requested the Petro-Systems toolpusher to provide welders to perform work near the tops of various metal legs of the platform, indicating the particular work that was needed. Oliver went to commence the welding work on one of the legs and was involved in a discussion which took place as to whether

scaffolding was necessary and chose not to use it.

4. Oliver assumed a position where two I-beams were attached to one of the legs of the platform just under the deck and began to work. After a few minutes, one of his legs began to cramp. He placed his foot on a near-by light fixture. This caused the light fixture to collapse, and Oliver fell 70 feet into the sea. The broken light fixture was found on the catwalk below the welding site directly following Oliver's fall.

5. Oliver suffered fractures to his pelvis and right fibula and sprained his neck and back, among other injuries. He sued Aminoil for damages sustained in the fall, claiming negligence of the defendant and strict liability for a defect in its platform.

6. There is no enforceable factual correlation between the fixture as a place for support and the fact that the fixture was designed to withstand winds of hurricane force in the Gulf of Mexico. Nor is there factual basis for strict liability under Olsen v. Shell Oil Co., 365 So. 2d 1285 (La. 1979).

7. Aminoil had no duty to assure that the light fixture be installed in a manner to insure that it was so strong and securely attached that it could support the weight of a person.

8. The purpose of the light fixture was to provide light on the platform, and it needed to be secure enough to withstand bad weather in the Gulf so it could continue to perform that purpose. However, the defendant was not called upon to insure that the fixture be installed for

use by a welder who would support himself thereupon while doing work on the platform.

9. Oliver was an experienced welder who had done welding work on other platforms and who knew how to evaluate the risks in performing his job. He determined that scaffolding was not necessary to perform the job. Although scaffolding could have been made available to him, he chose to do the work without it. He knew or should have known that he could not rely upon a light fixture for support while doing the job. 1

Conclusions of Law

1. Aminoil was not negligent in failing to make sure that the light fixture could withstand the weight of a welder, and the failure of the light fixture to withstand the weight of Oliver did not constitute a defect in the Aminoil platform.

2. The plaintiff was negligent.

Counsel for defendant is instructed to prepare a judgment consistent with these findings.

January 8, 1981.

s/Peter Beer

UNITED STATES
DISTRICT JUDGE

1/ I was impressed by the plaintiff's testimony. It was straightforward and competent in every respect. In short, I fully believed his version of the incident. Unfortunately, that version does not support a claim of liability on the part of defendant. I might add, for such use as a reviewing court may wish to make of it, that I was equally impressed with plaintiff's testimony regarding his injuries, which are fully set forth in the record. He neither minimized nor exaggerated his injuries, and should a reviewing Court conclude that liability exists, I would want that Court to know that I find the plaintiff's testimony on every point to be entirely credible.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

JOHN BUEHLER OLIVER — NO. 81-3036

versus — Summary Calendar

AMINOIL, USA, INC. — D.C. Docket No. CA 78 2241 "M"

Appeal from the United States District Court Eastern District of Louisiana.

Before AINSWORTH, REAVLEY and RANDALL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was taken under submission by the Court upon the record and briefs on file pursuant to Rule 18.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that plaintiff/appellant pay to defendant-appellee, the costs on appeal to be taxed by the Clerk of this Court.

November 25, 1981

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

JOHN BUEHLER OLIVER,
Plaintiff-Appellant,

versus

AMINOIL, USA, INC.,
Defendant-Appellee.

ON PETITION FOR REHEARING
(December 17, 1981)

Before AINSWORTH, REAVLEY and RANDALL, Circuit Judges.

PER CURIUM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

s/ Carolyn D. Randall
UNITED STATES CIRCUIT JUDGE

Opposition

NO. 81–1532

Supreme Court, U.S.
FILED
MAR 29 1982
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JOHN BUEHLER OLIVER,

Petitioner,

versus

AMINOIL, USA., INC.,

Respondent,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF IN OPPOSITION TO CERTIORARI

THOMAS M. YOUNG
424 Gravier Street
New Orleans, Louisiana 70130
Telephone: (504) 586–9120
Attorney of Record for Respondent
Aminoil, USA, Inc.

NO. 81-1532

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JOHN BUEHLER OLIVER,

Petitioner,

versus

AMINOIL, USA., INC.,

Respondent,

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Fifth Circuit.

ANSWER TO PETITION FOR CERTIORARI

QUESTIONS PRESENTED FOR REVIEW

Respondent submits that Petitioner has inaccurately set forth the real questions presented for review on this petition, and that they are more precisely stated as follows.

I.

Is review of determinations of fact by lower courts available or appropriate on writ of certiorari?

II.

Are lower court's interpretations of applicable law reviewable on writ of certiorari where those interpretations are consistant with other federal and state court constructions of the law?

LISTING REQUIRED BY SUPREME COURT RULE 28.1

Aminoil, USA, Inc. is the principal operating company of Aminoil, International, Inc., a subsidiary of R. J. Reynolds Industries, Inc. Affiliated companies include: American Independant Oil Company; Amtane, Inc.; Solar Gas, Inc.; and Aminiol of Louisiana, Inc.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Listing Required by Supreme Court Rule 28.1 ii

Statement of the Case 1

Argument 2

Certificate of Service 6

TABLE OF AUTHORITIES

Page

Andry v. Kinberger, 364 So.2d 613 (La. App. 4, 1978) . . .5

Arnold v. Union Oil Co., 608 F.2d 575 (C.A.5, 1979) 5

Baker v. Hartford A. & I. Co., 136 So.2d 828 (La. App. 1, 1961) 4

Bersuder v. Employers' Liab. Assur. Corp., 210 So.2d 525 (La. App. 4, 1968) 2

Bourg v. Texaco Oil Co., Inc., 578 F.2d 1117 (C.A. 5, 1978) 3

Broussard v. National Food Stores, 233, So. 2d 599, aff'd So. 2d 838 (La. App. 3, 1970) 3

Cates v. Beauregard Electric Cooperative, Inc., 328 So.2d 367 (1976) 3

Geek v. Garrard-Milner Chevrolet Co., 243 So.2d 294 (La. App. 4, 1971) 4

Hellinger v. Cook Paint and Varnish Co., 230 So.2d 623 (La. App. 3, 1970) 4

Henson v. Travelers Inc. Co., 228 So.2d 667 (La. App. 1, 1969) 4

Jones v. Fireman's Fund Ins. Co., 298 So.2d 337 (La. App. 3, 1974) 2, 4

Lafitte v. Grain Dealers Mut. Ins. Co., 121 So.2d 774 (La. App. 2, 1960) 4

TABLE OF AUTHORITIES (Continued)

Page

Magoni v. Wells, 154 So.2d 524, writ refused, 156 So.2d 602 (La. App. 4, 1963) 3

Olsen v. Shell Oil Co., 365 So.2d 1285 (La. 1979) 4

Prestenbach v. Sentry Ins. Co., 340 So.2d 1331 (La. 1976) 5

Rau v. Sun Ins. Co., 239 So.2d 481 (La. App. 4, 1970) 4

Roberts v. Tidex, Inc., 251 So.2d 509 (La. App. 1, 1971) 5

Romano v. Bonstaff, 198 So.2d 499 (La. App. 4, 1967) 4

Sigler v. Mt. Vernon Fire Ins. Co., 201 So.2d 656 (La. App. 3, 1967) 3

Stoute v. Mobil Oil Corp., 297 So.2d 276 (La. App. 3, 1974) 3

Thibodeaux v. McWane Cast Iron Pipe Co., 381 F.2d 491 (C.A. 5, 1967) 4

Other Authorities:

LSA–C.C. art. 2322 3

STATEMENT OF THE CASE

This is a suit by John Oliver, a welder employed by Petro-Systems, Inc., who was working on a fixed platform on the Outer Continental Shelf owned by Aminoil USA, Inc. and who was injured on April 6, 1978 when he fell from the platform into the Gulf of Mexico.

Aminoil USA, Inc., had contracted with Petro-Systems, Inc. a/k/a Petro-Weld, Inc., an independent contractor specializing in steel fabrication, for certain construction and welding work on the platform (R. 6, 7). The Petitioner had approximately two years experience in offshore work, both as a welder and as a welder's helper (R. 73, 101).

Aminoil had a representative on the platform, Gerry Overfelt whose job it was to see that Petro-Systems did the work it contracted to do and that the finished product was what Aminoil desired. Mr. Overfelt did not supervise the work done by Petro-Systems nor did he undertake to direct the manner in which the work was performed. (R. 25, 16, 54).

On the day of the accident, Mr. Overfelt requested certain welding work be done in areas beneath the uppermost deck of the platform and near the platform's main support legs. Joe Aucoin, the Petro-Systems foreman, instructed his assistant foreman, Lloyd Broussard, Sr., to have the Petitioner and another welder, Lloyd Broussard, Jr., go below and do the work requested. (R. 8, 9, 21, 24, 121, 122, 127). The welding was to be done at the corners of the platform on the underside of the top deck where it joined the main support legs. The Petitioner had to climb up and outward to reach the place where he was to work, from which point there was a straight drop of approximately seventy feet to the water below. After surveying the location, the Petitioner proceeded to climb up into position and started to

work. He chose not to use any scaffolding, safety belt, rope or other apparatus or device which would have allowed him to do the work in safety and which would have insured that he would not fall if he lost his balance.

Oliver began working without any direct assistance from anyone and shortly thereafter fell to the water below, sustaining injuries in the process. There were no witnesses to the accident.

The case was tried in Section "M", U.S. District Court for the Eastern District of Louisiana, Honorable Peter Beer, Judge, presiding and judgment was entered in favor of Aminoil on the Court's finding that Aminoil was not negligent, its platform was not defective, and that the negligence of the Petitioner himself caused his accident and injuries. The Fifth Circuit Court of Appeals affirmed, concluding that Oliver had failed to prove the necessary elements for liability and that the evidence supported the District Court's conclusion that Oliver himself was negligent.

ARGUMENT

There are no special or important reasons which could possibly justify the issuance of a writ of certiorari in this case. There are no federal questions involved here and the decision of the court of appeal is not in conflict with the decision of any other court on the same or similar matters.

The owner of an offshore platform is not the guarantor of the safety of persons on the premises and does not insure them against the possibility of an accident. ***Jones v. Fireman's Fund Ins Co.***, 298 So. 2d 337 (La. App. 3, 1974); ***Bersuder v. Employer's Liability Assurance Corp.*** 210 So. 2d 525 (La. App. 4, 1968). The owner of an offshore platform is not required to furnish permises which are perfect, but only premises which are reasonably safe for their intended

use and which may be used in safety by the exercise of ordinary care. ***Magoni v. Wells*** 154 So. 2d 524, writ refused, 156 So. 2d 602 (La. App. 4, 1963); ***Broussard v. National Food Stores***; 233 So.2d 599, aff'd 246 So.2d 838 (La. App. 3, 1970); ***Sigler v. Mt Vernon Fire Insurance Co.***, 201 So.2d 656 (La. App. 3, 1967); ***Bourg vs. Texaco Oil Co., Inc.***, 578 F.2d 1117 (C.A. 5, 1978).

The duty of a platform owner is to act as a reasonable man in the management of his property in view of the existing circumstances and the probability of injury to others. ***Cates vs. Beauregard Electric Cooperative, Inc.***, 328 So2d 367 (1976). In this case, Aminoil retained the services of an experienced contractor which held itself out as expert in the type of work it did. Aminoil's representative, Overfelt, was entirely reasonable in leaving the details of the work and the method by which it was accomplished to the Petitioner and to the other Petro-Systems employees who were experienced and expert in that area. Overfelt merely pointed out what he wanted accomplished. He did not undertake to tell either the plaintiff or the plaintiff's employer how the work ought to be done; he did not supervise the work; and did not even remain on the platform while the work was in progress. Aminoil's contract with Petro-Systems required that the contractor provide the personnel, equipment and supervision necessary to safely perform the job and the owner was entitled to rely upon the contractor to perform in accordance with that contract. ***Stoute vs. Mobil Oil Corp.***, 297 So.2d 276 (La. App. 3, 1974).

Petitioner contends that a light fixture was defective under Louisiana Civil Code 2322 because it gave way under his weight. There was no evidence whatsoever to even suggest that the light fixture was designed to hold the weight of a man or to be used as a foot rest, or that Aminoil had any reason to expect that it would be so used. The fixture was not an instrumentality inherently dangerous or defective,

nor did it present an unreasonable risk of harm in its ordinary and expected use, i. e., as a bracket to hold a light in place. Liability has been found under Article 2322 only where the defect giving rise to the jury has occurred in an instrumentality which was being used in the manner in which it was anticipated or intended to be used and its failure in normal use was wholly unexpected. ***Olsen v. Shell Oil Company***, 365 So.2d 1285 (La. 1979).

The evidence showed that the plaintiff himself assessed the situation and determined what equipment would be required and the method by which the job should be done. In spite of the recommendations of his foreman, he elected to do the job without the use of scaffolding, safety belts, or other equipment which might have reduced the risk of injury. (R. 22, 23, 36, 68, 69, 102, 139, 146).

As owner of the platform, Aminoil cannot be held responsible to the plaintiff for any injury resulting from a danger which was obvious or which should have been observed by him in the exercise of reasonable care. ***Lafitte v. Grain Dealers Mut. Ins. Co.***, 121 So.2d 774 (La. App. 2, 1960); ***Baker v. Hartford A. & I. Co.***, 136 So.2d 828(La. App. 1, 1961); ***Thibodeaux v. McWane Cast Iron Pipe Co.***, 381 F.2d 491 (C.A. 5, 1967); ***Greek v. Garrard-Milner Chevrolet Co.***, 243 So.2d 623 (La. App. 4, 1971); ***Romano v. Bonstaff***, 198 So.2d 499 (La. App. 4, 1967); ***Jones v. Fireman's Fund Ins. Co.***, 298 S.2d 337 (La. App. 3, 1974); ***Rau v. Sun Ins. Co.***, 239 So.2d 481(La. App. 4, 1970).

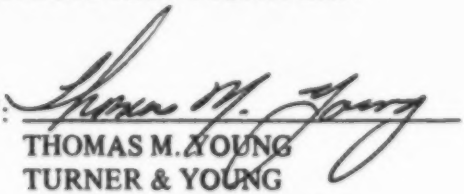
For reasons known only to himself, Petitioner failed to take advantage of reasonable and readily available equipment and alternative means of doing the job and put himself in an obviously dangerous position. He assumed the risk of an injury which he ultimately sustained. ***Henson v. Travelers Ins. Co.***, 228 S.2d 667 (La. App. 1, 1969); ***Hellinger v. Cook Paint and Varnish Co.***, 230 So.2d 623 (La. App.

3, 1970); *Roberts v. Tidex, Inc.*, 251 So.2d 509 (La. App. 1, 1971); *Prestenbach v. Sentry Ins. Co.*, 340 So.2d 1331 (La. 1976); *Andry v. Kinberger*, 364 So.2d 613 (La. App. 4, 1978); *Arnold v. Union Oil Co.*, 608 F.2d 575 (C.A. 5, 1979).

There is no dispute as to what law applies under the circumstances of this case, nor any disagreement as to its interpretation. This is, purely and simply, a case in which the evidence contradicted rather than supported the petitioner's claims.

Nothing here warrants the exercise of this Court's supervisory jurisdiction. The petition for certiorari should be denied.

RESPECTFULLY SUBMITTED:

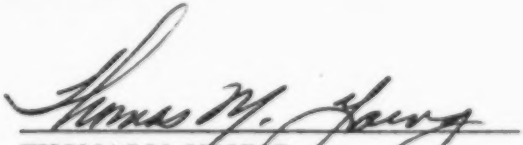
BY: 

THOMAS M. YOUNG
TURNER & YOUNG
A Professional Corporation
424 Gravier Street
New Orleans, Louisiana 70130
Telephone: (504) 586–9120
Attorney for Aminoil, USA, Inc.,
Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing reply to petition for certiorari have been served on counsel for Petitioner listed below, this 12th day of March, 1982.

Hugh G. Oliver
P.O. Box 511–528
4th St., Westwego, Louisiana 70094
Attorney for John Beuhler Oliver



THOMAS M. YOUNG
424 Gravier St.,
New Orleans, Louisiana 70130
Telephone: (504) 586–9120
Attorney for Respondent
Aminiol, USA, Inc.